

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

|                        |   |                               |
|------------------------|---|-------------------------------|
| <b>EDWARD K. FEIST</b> | ) |                               |
| Claimant               | ) |                               |
| VS.                    | ) |                               |
|                        | ) | Docket Nos. 216,733; 216,734; |
|                        | ) | 233,079; & 233,798            |
| <b>CONAGRA</b>         | ) |                               |
| Respondent,            | ) |                               |
| Self-Insured           | ) |                               |

**ORDER**

Claimant appealed the November 7, 2001 Award entered by Administrative Law Judge Bryce D. Benedict. The Board heard oral argument on May 14, 2002.

**APPEARANCES**

Jeff K. Cooper of Topeka, Kansas, appeared for claimant. Michelle Haskins of Kansas City, Missouri, appeared for respondent.

**RECORD AND STIPULATIONS**

The record considered by the Board and the parties' stipulations are listed in the Award. Additionally, at oral argument before the Board, the parties agreed that they did not contest the Judge's findings of the various average weekly wages. Likewise, the parties agreed that they did not contest the Judge's finding that claimant sustained a 16 percent whole body functional impairment due to the bilateral carpal tunnel syndrome, which took into consideration the functional impairment ratings provided by Dr. Lanny W. Harris and Dr. P. Brent Koprivica. Finally, the parties have also advised the Board that claimant died September 23, 2001.

**ISSUES**

Judge Benedict consolidated these four claims for purposes of taking evidence and issuing an award. In the first claim, docket number 216,733, the Judge awarded claimant a 16 percent permanent partial general disability for bilateral carpal tunnel syndrome. The

Judge determined that neither claimant's left biceps tendon rupture nor torn rotator cuff in the left shoulder were related to his work activities or the physical therapy that claimant underwent for his work-related bilateral carpal tunnel syndrome. The Judge denied claimant's request for a work disability (a disability greater than the functional impairment rating) after finding that claimant left respondent's employment due to his left shoulder injury rather than as a result of the bilateral carpal tunnel syndrome.

In the second claim, docket number 216,734, the Judge awarded claimant a two percent permanent partial general disability for a rib injury. In docket number 233,079, the Judge awarded claimant a twelve percent permanent partial general disability for binaural hearing loss. And finally, in docket number 233,798, the Judge denied claimant's request for benefits after determining that claimant failed to prove that he sustained a series of traumas to the left shoulder through his last day of work for respondent on December 5, 1997.

At oral argument before the Board, the parties narrowed the issues in dispute to the nature and extent of disability in docket numbers 216,733 and 233,798. In the former claim, claimant alleges that he slipped and fell on ice on December 13, 1995. Claimant argues that as a result of that accident he developed bilateral carpal tunnel syndrome and also injured his left shoulder, with his shoulder symptoms worsening during the physical therapy that followed the carpal tunnel release surgeries. In the alternative, claimant alleges in docket number 233,798 that he injured his left shoulder in a series of work-related traumas through his last day of work for respondent on December 5, 1997.

Accordingly, claimant requests the Board to modify the November 7, 2001 Award by granting him benefits for a 64½ percent permanent partial general disability (58 percent task loss and 71 percent wage loss) for the bilateral carpal tunnel syndrome and permanent disability benefits for a 19 percent permanent functional impairment to the left upper extremity at the shoulder level. Claimant concedes, however, that any work disability would not commence until after claimant left work on December 5, 1997.

Conversely, respondent contends the Award should be affirmed. It argues claimant retired due to his left shoulder problems, which claimant failed to prove were related to his work. Therefore, it contends claimant's permanent partial general disability should be limited to his whole body functional impairment rating for the bilateral carpal tunnel syndrome.

The only issues before the Board on this appeal are the nature and extent of injury and disability in docket numbers 216,733 and 233,798. In addressing those issues, the Board must also determine if claimant's left shoulder injury is compensable under the

Workers Compensation Act. The Board must also determine whether claimant is entitled to receive a work disability for the compensable injuries sustained.

**FINDINGS OF FACT**

After reviewing the entire record, the Board finds:

1. Claimant worked for respondent and its predecessor for almost 19 years from January 1979 through approximately December 5, 1997, when he retired. For the last 15 years of that period, claimant worked as a corn oil operator, operating and maintaining equipment that extracted oil from grain.
2. On December 13, 1995, claimant fell at work, injuring his left wrist. Claimant began receiving medical treatment but continued to work. While protecting his injured left wrist, claimant developed progressively worsening symptoms in his right hand and arm and was eventually diagnosed with bilateral carpal tunnel syndrome. In June 1997, claimant underwent right carpal tunnel release surgery. The next month he underwent left carpal tunnel release surgery.
3. But the December 1995 accident was not the only accident that claimant sustained while working for respondent. In June 1996, claimant fell at work and injured his left rib cage, which also required medical treatment. That accident is the subject of docket number 216,734.
4. Claimant believes he injured his left shoulder in the December 1995 fall but his shoulder symptoms were controlled by the medications that he received for the bilateral hand and wrist injuries and by those medications that he received for the rib injury. Claimant noticed a marked increase in his left shoulder symptoms in approximately September 1997 while undergoing physical therapy following the bilateral carpal tunnel releases.
5. The medical evidence that supports claimant's belief that he injured his left shoulder in the December 1995 fall is scant. On December 15, 1995, claimant sought treatment at Med Clinic Occupational Health Services in St. Joseph, Missouri. The documents from that clinic indicate claimant sprained or strained his left wrist on December 13, 1995, by falling on ice. Those documents, which include office notes from December 15, 19, 22 and 29, 1995; January 5 and 19, 1996; May 30 and 31, 1996; June 13 and 24, 1996; July 8 and 22, 1996; and August 5 and 19, 1996, contain only one reference to left shoulder complaints. In the note dated January 19, 1996, the doctor noted that claimant was complaining of discomfort in his left shoulder and left arm. That note reads, in part:

Not been feeling well for the past couple of days and has been having some SOB and discomfort in his left shoulder and left arm which he describes as an achy sensation. He has also had some upper respiratory complaints, sinus congestion, drainage, etc.

The January 19, 1996 medical note also indicates that claimant's left wrist strain had resolved. But claimant returned to the clinic on May 30, 1996, complaining of bilateral wrist pain and numbness at night. At that point, Med Clinic's Dr. David W. Cathcart diagnosed claimant as having right carpal tunnel syndrome and left wrist degenerative joint disease. The doctor prescribed medication and two cock-up wrist braces to wear at night.

6. Claimant returned to Med Clinic on both June 12 and 13, 1996. The June 13, 1996 medical note indicates that claimant was continuing to have bilateral wrist symptoms. Dr. Cathcart prescribed physical therapy. Despite claimant's ongoing symptoms, the doctor released claimant to resume regular work. According to claimant, he advised Dr. Cathcart that his left shoulder was hurting but the doctor said it was arthritis. Med Clinic's medical records, however, do not substantiate claimant's testimony.

7. At Dr. Cathcart's referral, claimant attended physical therapy at Healthsouth Sports Medicine & Rehabilitation Center. Claimant's physical therapist was Charles Edwards, who provided the following history in his June 17, 1996 report:

This patient was seen with chief complaint of discomfort in the dorsal aspect of his wrist bilaterally, left side worse than right. He states that in the last week of December, 1995 he fell on ice and "jammed" his left wrist. He states he has had persistent pain and stiffness which worsened to the point where he was off work for three weeks. He states he returned to work but the pain again increased. He states because the left wrist was so painful, he overworked the right wrist and has begun to experience achiness and stiffness in that wrist over the past six weeks. In the left wrist, the pain is more in the dorsal radial aspect along the hand and wrist area. In the right wrist, it is more in the dorsal wrist area. He also complains of tingling in the right fingers.

According to his report, the therapist believed claimant possibly had right carpal tunnel syndrome and left wrist sprain or strain. The therapist's notes do not mention that claimant was having shoulder symptoms.

8. Claimant saw Dr. Sergio Delgado for a medical evaluation on September 19, 1996. The history given to Dr. Delgado was that claimant fell on ice injuring both hands and arms on December 3 [sic], 1995, and fell again on June 22, 1996, injuring his left rib cage.

9. As a result of that September 1996 evaluation, Dr. Delgado diagnosed right carpal tunnel syndrome, left wrist strain and a left rib injury. In his September 20, 1996 report to

claimant's attorney, the doctor noted that claimant was complaining of pain in his left rib cage, pain in both wrists, and numbness and tingling in both arms. The doctor specifically noted that claimant reported no complaints in the right shoulder and that claimant had a normal range of motion in both shoulders. Furthermore, claimant did not indicate that he was having any left shoulder symptoms in the pain drawings that he provided to Dr. Delgado. On page 2 of his September 20, 1996 report, Dr. Delgado wrote, in part:

He [claimant] has no complaints in the shoulder or anterior chest region on the right but has complaints of pain in the ribs on the left side, aggravated by pressure there. . . . **Range of motion of the shoulders is within normal limits.** There was no scapulothoracic winging and there is normal scapulothoracic excursion. There is no atrophy, fasciculations or fibrillations of the shoulder girdle musculature. **Impingement syndrome signs were normal bilaterally at the shoulders** and there is no bicipital groove tenderness. (Emphasis added.)

10. Dr. Delgado recommended conservative treatment for claimant's right carpal tunnel syndrome and initially restricted claimant from repetitive lifting, pushing and pulling. The doctor believed those restrictions were also appropriate for claimant's rib injuries as well as the left wrist strain. The doctor recommended physical therapy for the rib injuries and for the right carpal tunnel syndrome, and further advised that he felt claimant could continue to perform sedentary work, if available. Dr. Delgado also advised that claimant might require surgery for the right carpal tunnel syndrome. In his report, the doctor noted claimant did "not expect to continue his work activities in the future." In short, the doctor's report does not support the claim of ongoing left shoulder problems following the December 1995 accident.

11. In late 1996, Judge Benedict appointed Dr. Lanny W. Harris, an orthopedic surgeon, to evaluate claimant. On February 4, 1997, claimant saw Dr. Harris, who initially diagnosed persistent mild right carpal tunnel syndrome and bilateral degenerative disease in the wrists. After having claimant undergo nerve conduction studies in April 1997, the doctor diagnosed bilateral carpal tunnel syndrome and wrote the Judge that claimant should consider surgery. The doctor did not mention that claimant was having left shoulder symptoms. But according to claimant's wife, who accompanied claimant to his visits with Dr. Harris, claimant complained about his left shoulder at every office visit with Dr. Harris.

12. In June 1997, Dr. Harris performed a carpal tunnel release on claimant's right wrist. In July 1997, the doctor performed the same procedure on claimant's left wrist. The doctor then sent claimant to physical therapy.

13. In his office notes dated September 26, 1997, Dr. Harris writes that claimant was having pain and stiffness in his shoulders, primarily the left shoulder. At that visit, claimant told the doctor that he had noticed pain and limited motion in his shoulders since the

December 13, 1995 accident, but the pain had become worse during the last two or three weeks.

Ed Feist is back. Mr. Feist has participated in therapy. He apparently has mentioned to therapy that he is having pain and stiffness in his shoulders, primarily the left shoulder. We had quite a discussion today regarding the shoulders. He says that he has had pain and problems in the shoulders ever since his injury in 1995. Apparently the last two to three weeks the pain has become worse, but he says he has always had this pain and limited motion.

A review of the records indicated that as far back as 1996, on an independent medical evaluation, he had full ROM of both shoulders. By review of the court order and the cover letters from the attorneys, there was not [sic] mention of the shoulders.<sup>1</sup>

14. In mid-October 1997, following claimant's recovery from his carpal tunnel surgeries, Dr. Harris released claimant to return to work without restrictions. But claimant did not actually begin working again until early November 1997. After about two weeks following his return to work, claimant applied for early retirement.

15. At the July 2001 regular hearing, claimant testified that he returned to work for respondent to his regular job duties and found that he was unable to do the work as it caused pain in his hands and pain in his left shoulder. According to claimant's regular hearing testimony, the more hours he worked, the more his hands hurt and ached. Claimant also testified at the regular hearing that the pushing, pulling and lifting caused problems with both his hands and left shoulder. Claimant stated that he felt he had no choice but to retire as he was afraid that he might be terminated.

16. But at the November 1997 preliminary hearing, in which claimant was seeking medical treatment for his left shoulder, claimant testified the physical therapist who had treated claimant following the carpal tunnel surgeries had noticed a swelling in the upper part of claimant's left arm. Claimant testified he had experienced problems in his shoulders following the December 1995 fall and more so after the June 1996 fall and rib injury, but his left arm and shoulder had begun hurting worse during his physical therapy. At the November 1997 preliminary hearing, claimant also testified he was only having problems with his left upper extremity as he was not having any problems with his right hand and wrist. Claimant testified, in part:

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<sup>1</sup> Dr. Harris' September 26, 1997 office notes, which are included in the medical records attached to the parties' Joint Stipulation for Admission of Evidence filed with the Division on August 17, 2001.

Q. (Mr. Cooper) Are you having difficulty doing the oil operator job with your wrist and with your shoulder?

A. (Claimant) The last -- this is going on my third week back.

Q. But are you having difficulty doing your job?

A. Yeah. See, I've got to push off with my left hand with this on it. My right is fine.

Q. Okay.<sup>2</sup>

On cross-examination, claimant again testified that he was having problems with his left shoulder and left wrist but that he was having no problems with the right upper extremity.

At the November 1997 hearing, claimant was not asked about either retirement or whether it was the carpal tunnel symptoms or the left shoulder symptoms that comprised the greater obstacle to doing his job as an oil operator.

17. In August 1998 at a later preliminary hearing, claimant again requested medical treatment for his left shoulder. At that hearing claimant testified how he had returned to work for respondent following the carpal tunnel release surgeries and found his work caused more pain in his left shoulder, causing him to retire. Claimant testified, in part:

Q. (Mr. Cooper) Okay. Did working there [after returning to work in November 1997] cause you problems with your left shoulder?

A. (Claimant) Well, I complained about it, but I guess there was nothing they could do about it.

Q. Okay. Did the work cause you to have more problems, more pain in that shoulder?

A. Yeah, and then I had to retire.

Q. Okay. Why did you have to retire?

A. Well, I couldn't take that constant pain and -- see, I can't lift it only like this (demonstrating).

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<sup>2</sup> November 19, 1997 preliminary hearing transcript, page 12.

...

Q. Okay, and you ultimately took retirement?

A. Yeah.

Q. Is that because your shoulder was hurting you so bad?

A. Yeah, in December of '97.<sup>3</sup>

18. Claimant retired from respondent's employment on approximately December 5, 1997, and in January 1998 began receiving \$134.78 per month from respondent in retirement benefits, along with some health and pharmacy benefits. According to claimant, before suffering these injuries he had planned to work for respondent at least until he had reached 62 years of age.

19. The record does not provide detail as to how claimant's left shoulder symptoms progressed following the December 1997 retirement. But in July 1999, Dr. Harris operated on claimant's left shoulder and repaired the rotator cuff. The doctor's operative report states that the doctor's postoperative diagnosis was "[p]artial left rotator cuff tear with impingement."

20. In a December 29, 1999 letter to respondent's attorney, Dr. Harris rated claimant's left shoulder injury as constituting a seven percent permanent partial impairment to the upper extremity using the American Medical Association's *Guides to the Evaluation of Permanent Impairment*. Dr. Harris later rated claimant's functional impairment due to the bilateral carpal tunnel syndrome but, as indicated above, the parties have agreed claimant sustained a 16 percent whole body functional impairment due to that condition.

21. When claimant testified at the July 2001 regular hearing, he was working approximately 24 to 30 hours per week at a fast food restaurant and also eight hours per week at a grocery store. Claimant was earning \$5.50 per hour at both jobs and had been working at the fast food restaurant since July 1998 and at the grocery store for approximately 18 months, which would indicate that he had been working there since approximately January 2000. Claimant looked for other employment near his hometown of Tunas, Missouri, but he was not successful in that endeavor. Since leaving respondent's employment, claimant worked only the two jobs previously mentioned.

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<sup>3</sup> August 5, 1998 preliminary hearing transcript, pages 16 through 18.



22. Respondent first deposed Dr. Harris in October 1998, before claimant underwent left shoulder surgery. At that time, Dr. Harris testified that he believed claimant first complained of left shoulder complaints in September 1997. The doctor disagrees with claimant's wife that claimant complained of his left shoulder on each occasion that he saw claimant.

23. Dr. Harris discussed the left shoulder complaints with claimant but was unable to determine their source. Dr. Harris ruled out claimant's physical therapy as their cause as the doctor did not believe that claimant did anything stressful enough during therapy to injure either his shoulders or the biceps tendon. Likewise, Dr. Harris does not believe that claimant's employment from approximately November 5, 1997, through the date of his retirement on December 5, 1997, caused or aggravated claimant's left shoulder as his left shoulder complaints did not change from what they were in September 1997. Finally, the doctor ruled out claimant's inactivity while recovering from the carpal tunnel releases as inactivity might cause some increased stiffness in an injured shoulder but it would not cause a torn rotator cuff or a biceps tendon rupture.

Conversely, Dr. Harris testified that the left shoulder injury, including the left biceps tear, are conditions that can happen as part of the normal aging process or as the result of normal day-to-day activities. In short, Dr. Harris does not know the cause of claimant's shoulder injury and the resulting complaints.

24. In January 2001, respondent deposed Dr. Harris for a second time. Unlike the first deposition, this deposition occurred after claimant's shoulder surgery, after the doctor had released claimant to full duty in November 1999, and after the doctor saw claimant for a final evaluation in October 2000.

25. Claimant presented the testimony of Dr. P. Brent Koprivica, who examined claimant both in May 1998 and May 2000. Dr. Koprivica believes that both claimant's bilateral carpal tunnel condition and left shoulder injury were caused by his work activities. Claimant told the doctor that his left shoulder symptoms began with the December 1995 fall at work. In May 1998 claimant also told the doctor that his left shoulder symptoms were precluding him from using his left shoulder or arm.<sup>4</sup>

For the bilateral carpal tunnel syndrome, Dr. Koprivica determined that claimant should avoid work activities that require repetitive pinching, grasping, wrist flexion/extension, ulnar deviation of the wrist or work that exposes claimant's upper extremities to vibration. The doctor believed claimant's strength loss from the bilateral

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<sup>4</sup> Dr. Koprivica's May 21, 1998 report to claimant's attorney, page 5, which is marked as deposition exhibit 2 to the doctor's July 11, 2001 deposition.

carpal tunnel syndrome restricted claimant to work activities that did not exceed the medium physical demand level.

The doctor rated claimant's left upper extremity functional impairment at 19 percent due to the shoulder injury. Dr. Koprivica also reviewed a list of former work tasks that claimant performed for respondent in the 15-year period before December 1997. The doctor identified seven of the 12 work tasks as tasks claimant should no longer perform due to his injuries. The doctor also indicated that claimant lost those work tasks regardless of whether he only considered the bilateral carpal tunnel syndrome or he only considered the left shoulder injury.

### **CONCLUSIONS OF LAW**

As explained below, the Award should be modified to grant claimant a work disability.

The Board affirms the Judge's finding that claimant failed to prove that his left shoulder injury was caused by a work-related accident or by the physical therapy that he received following his carpal tunnel release surgeries. The Board finds Dr. Harris' testimony persuasive that claimant's physical therapy was not stressful enough to cause either the torn rotator cuff or the biceps tendon rupture. Likewise, the Board is persuaded by Dr. Delgado's September 1996 examination in which claimant had normal range of motion in his shoulders and at which claimant failed to note any shoulder complaints in the pain drawings that he completed. Accordingly, in docket number 216,733, only the bilateral carpal tunnel syndrome is compensable, and the claim for the left shoulder injury should be denied. Likewise, in docket number 233,798, the claim for the left shoulder injury should be denied.

Because claimant's injuries comprise an "unscheduled" injury, the permanent partial general disability rating is determined by the formula set forth in K.S.A. 44-510e (Furse 1993). That statute provides, in part:

The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury. In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. . . . An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in

any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury.

But that statute must be read in light of *Foulk*<sup>5</sup> and *Copeland*.<sup>6</sup> In *Foulk*, the Court of Appeals held that a worker could not avoid the presumption against work disability as contained in K.S.A. 1988 Supp. 44-510e (the predecessor to the above-quoted statute) by refusing to attempt to perform an accommodated job that the employer had offered and which paid a comparable wage. In *Copeland*, the Court of Appeals held, for purposes of the wage loss prong of K.S.A. 44-510e (Furse 1993), that a worker's post-injury wages should be based upon the ability to earn rather than actual wages when the worker fails to make a good faith effort to find appropriate employment after recovering from his or her injury.

If a finding is made that a good faith effort has not been made, the factfinder [sic] will have to determine an appropriate post-injury wage based on all the evidence before it, including expert testimony concerning the capacity to earn wages. . . .<sup>7</sup>

The principal question in determining whether claimant is entitled to receive a work disability for his bilateral carpal tunnel syndrome is whether his corn oil operator job was appropriate for claimant to perform following his carpal tunnel releases. The Board finds Dr. Koprivica's opinions regarding claimant's permanent work restrictions and limitations more credible and persuasive than Dr. Harris' opinion that claimant needs no restrictions at all. The Board concludes that claimant's job as a corn oil operator was not appropriate in light of claimant's bilateral wrist injuries and resulting medical restrictions.

Dr. Koprivica identified seven of the 12 work tasks that claimant performed as a corn oil operator that claimant should no longer perform due to the bilateral carpal tunnel syndrome. Accordingly, claimant has proven a 58 percent task loss.

Claimant continued to work for respondent through December 5, 1997, and has conceded that any work disability that he may have would not start until after that date. Accordingly, claimant's permanent partial general disability is based upon the 16 percent whole body functional impairment for the bilateral carpal tunnel syndrome for those weeks that claimant is entitled to receive permanent partial disability benefits following the date of accident through December 5, 1997.

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<sup>5</sup> *Foulk v. Colonial Terrace*, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), rev. denied 257 Kan. 1091 (1995).

<sup>6</sup> *Copeland v. Johnson Group, Inc.*, 24 Kan. App. 2d 306, 944 P.2d 179 (1997).

<sup>7</sup> *Copeland*, at 320.

Claimant was unemployed from December 6, 1997, until he obtained employment in July 1998 with a fast food restaurant. The Board concludes that claimant made a good faith effort to find appropriate employment and, therefore, he has a 100 percent wage loss for that period. Averaging a 100 percent wage loss with a 58 percent task loss creates a 79 percent work disability for the period from December 6, 1997, through June 30, 1998.

From approximately July 1, 1998, through approximately December 1999, claimant worked solely for the fast food restaurant earning approximately \$165 per week. Comparing the \$165 to claimant's pre-injury wage of \$703.50, claimant had an approximate 77 percent wage loss for that period of time. Averaging the 77 percent wage loss with his 58 percent task loss creates a 68 percent work disability.

In approximately January 2000, claimant found a second part-time job with a grocery store where he worked eight hours per week. At that point, claimant's post-injury wage increased to approximately \$209 per week. Accordingly, for the period from January 1, 2000, through claimant's date of death on September 23, 2001, claimant's wage loss was 70 percent. Averaging the 70 percent wage loss with the 58 percent task loss establishes a 64 percent work disability.

Accordingly, claimant has a 16 percent permanent partial general disability through December 5, 1997; followed by a 79 percent permanent partial general disability through June 30, 1998; followed by a 68 percent permanent partial general disability through December 31, 1999; followed by a 64 percent permanent partial general disability through September 23, 2001, when the permanent disability benefits cease due to claimant's death.

The Board adopts the findings and conclusions set forth in the Award that are not inconsistent with the above and which are supported by the record.

### **AWARD**

**WHEREFORE**, the November 7, 2001 Award issued in docket number 216,733 is modified as follows:

Edward K. Feist is granted compensation from ConAgra for a December 13, 1995 accident and resulting disability. Based upon an average weekly wage of \$703.50, claimant is entitled to receive 22.92 weeks of temporary total disability benefits at \$326 per week, or \$7,471.92.

For the period through December 5, 1997, claimant is entitled to receive 65.13 weeks of permanent disability benefits at \$326 per week, or \$21,232.38, for a 16 percent permanent partial general disability.

For the period from December 6, 1997, through June 30, 1998, claimant is entitled to receive 29.57 weeks of permanent disability benefits at \$326 per week, or \$9,639.82, for a 79 percent permanent partial general disability.

For the period from July 1, 1998, through December 31, 1999, claimant is entitled to receive 78.43 weeks of permanent disability benefits at \$326 per week, or \$25,568.18, for a 68 percent permanent partial general disability.

For the period from January 1, 2000, through September 23, 2001, claimant is entitled to receive 87.40 weeks of permanent disability benefits at \$326 per week, or \$28,492.40, for a 64 percent permanent partial general disability and a total award of \$92,404.70, which is all due and owing less any amounts previously paid in this claim.

The Board adopts the remaining orders set forth in the November 7, 2001 Award including, among other things, the awards of benefits in docket number 216,734 for the rib injury and in docket number 233,079 for the binaural hearing loss.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 2002.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Jeff K. Cooper, Attorney for Claimant  
Michelle Haskins, Attorney for Respondent  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Workers Compensation Director